Supreme Court, U.S.
FILED
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No. 08-1252

IN THE

Supreme Court of the United States

October Term, 2008

PETER PAUL MITRANO,

Petitioner,

versus

SUPREME COURT OF THE
STATE OF NEW HAMPSHIRE,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of New Hampshire

PETITION FOR WRIT OF CERTIORARI

Peter Paul Mitrano
Pro se
4912 Oakcrest Drive
Fairfax, Virginia 22030

Petitioner

February 9, 2009

Questions Presented for Review

1. Did the Supreme Court of the State of New Hampshire disbar petitioner in violation of his right to due process under the federal Constitution?

2. Do the actions and inactions of the State of New Hampshire and the District of Columbia related to this matter justify a revolution?

Parties to the Proceeding

The caption of this case in this Supreme Court of the United States contains the name of the petitioner. The members of the Supreme Court of the State of New Hampshire are Chief Justice Broderick, Justice Dalianis, Justice Duggan, Justice Galway and Justice Hicks. Neither party is a parent, subsidiary or affiliate of any company.

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On Petition for a Writ of Certiorari to the
Supreme Court of the State of New Hampshire

Peter Paul Mitrano respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of New Hampshire in this case.

Opinion Below

The Order of the Supreme Court of the State of New Hampshire from which petitioner seeks certiorari appears in the Appendix hereto at page A-1. The subsequent Order issued by the Supreme Court of the State of New Hampshire denying petitioner's motion for reconsideration appears in the Appendix hereto at A-5. All lower court decisions are unreported.

Jurisdiction

The Order of the Supreme Court of the State of New Hampshire was entered on October 6, 2008. (A-1) A timely motion for reconsideration was filed and an Order denying the motion for reconsideration was entered on November 10, 2008. (A-5) This petition for writ of certiorari was filed within ninety days of said date of November 10, 2008. This Court's jurisdiction is invoked under Title 28 United States Code, Section 1257(a).

Statutory Provision Involved

New Hampshire Supreme Court Rule 37(12) states that:

"(12) Reciprocal Discipline:

"(a) Upon being disciplined in another jurisdiction, an attorney admitted to practice in this State shall immediately notify the attorney discipline office of the discipline. Upon notification from any source that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the attorney discipline office shall obtain a certified copy of the disciplinary order and file it with the court.

"(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, the court may enter a temporary order imposing the identical or substantially similar discipline or, in its discretion, suspending the attorney pending the imposition of final discipline. The court shall forthwith issue a notice directed to

the attorney and to the professional conduct committee containing:

"(1) A copy of the order from the other jurisdiction; and

"(2) An order directing that the attorney or professional conduct committee inform the court within thirty (30) days from service of the notice, of any claim by the lawyer or professional conduct committee predicated upon the grounds set forth in subparagraph (d), that the identical or substantially similar discipline in this State would be unwarranted and the reasons for that claim.

"(c) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this State shall be deferred until the stay expires.

"(d) Upon the expiration of thirty (30) days from service of the notice pursuant to subparagraph (b), the court shall issue an order of final discipline imposing the identical or substantially similar discipline unless the attorney or professional conduct committee demonstrates, or the court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

"(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

"(2) The imposition of the same or substantially similar discipline by the court would result in grave injustice; or

"(3) The misconduct established warrants substantially different discipline in this State."

Statement of the Case

This petition for writ of certiorari arises from New Hampshire Bar Counsel filing a reciprocal discipline matter against the petitioner, Peter Paul Mitrano (hereinafter sometimes referred to as "Mitrano") in the Supreme Court of the State of New Hampshire. New Hampshire Bar Counsel predicated said action of reciprocal discipline upon *In re Mitrano*, 952 A.2d 901 (D.C. 2007).

This petition for writ of certiorari is related to a petition for writ of certiorari entitled *Peter Paul Mitrano* v. *District of Columbia Court of Appeals*, that was filed before this Supreme Court of the United States on January 12, 2009 (but has not yet been docketed). Petitioner Mitrano raised a number of issues before the Supreme Court of the State of New Hampshire which were summarily denied without any analysis or explanation by the Supreme Court of the State of New Hampshire. Petitioner Mitrano contends that his due process rights under the federal Constitution were violated because of the failure of the Supreme Court of the State of New Hampshire to adequately consider and rule upon the matters that petitioner Mitrano raised before the Supreme Court of the State of New Hampshire.

Arguendo, petitioner Mitrano also contends that the disciplinary matter before the District of Columbia Court of Appeals involves Acts of Congress and that therefore, this Court also has the power to hear this petition because it involves a matter of federal law.

Reasons for Granting the Writ

1. Did the Supreme Court of the State of New Hampshire disbar petitioner in violation of his right to due process under the federal Constitution?

Petitioner Mitrano has a constitutionally protected interest in his license to practice law. *Matter of Kenney*, 393 Mass. 431, 504 N.E.2d 652, 655 (1987). "We have frequently recognized the severity of depriving a person of the means of livelihood." *Cleveland Bd. of Educ.* v. *Loudermill*, 470 U.S. 532, 543 (1985). "He is accordingly entitled to procedural due process, which includes fair notice of the charges." *In re Ruffalo*, 390 U.S. 544, 550 (1908). "Once it is determined that due process applies, the question remains what process is due." *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972). Also see *Goldberg* v. *Kelly*, 397 U.S. 254, 269-270 (1970); and, *Schware* v. *Board of Bar Exam. of State of N.M.*, 353 U.S. 232, 238 (1957).

Petitioner Mitrano presented numerous reasons as to why the Supreme Court of the State of New Hampshire should not have disbarred Mitrano. With all due respect to the Supreme Court of the State of New Hampshire, Mitrano contends that when the Supreme Court of the State of New Hampshire is hearing an original matter (instead of acting as an appellate court) that the Supreme Court of the State of New Hampshire for the sake of due process had an obligation to address the arguments raised by Mitrano. See *Heckler* v.

Campbell, 461 U.S. 458, 471 n. 1 (1983) ("Inherent in the concept of a due process hearing is the decisionmaker's obligation to inform himself about facts relevant to his decision and to learn the claimant's own version of those facts."); and, *Goss* v. *Lopez*, 419 U.S. 565, 580 (1975) ("'(F)airness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . .' 'Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness.'") Also see *Oakes* v. *Buckman*, 87 Vt. 187, 88 A. 736, 737 (1913) ("the exceptions to the report raised questions which the trial court was bound to consider and dispose of according to law").

With all due respect to the Supreme Court of the State of New Hampshire, the Supreme Court of the State of New Hampshire's one and one-half page decision does not display an analysis of the arguments that Mitrano raised before the Supreme Court of the State of New Hampshire. As petitioner Mitrano contended before the Supreme Court of the State of New Hampshire, due process as required by the Fifth and Fourteenth Amendments of the United States Constitution required that the Supreme Court of the State of New Hampshire address the arguments raised before the Supreme Court of the State of New Hampshire. Also see A1-A2 for a further reference of petitioner Mitrano's due process arguments. Furthermore, it is difficult for this Supreme Court of the United States to review the decision of the Supreme Court of the State

of New Hampshire to determine whether the Supreme Court of the State of New Hampshire violated the due process rights of petitioner Mitrano when the Supreme Court of the State of New Hampshire's decision consists of, for the most part, conclusory statements that are unsupported on the face of the Supreme Court of the State of New Hampshire's decision.

Petitioner also asserts the application of the "rubber stamp" theory; see *E.E.O.C.* v. *BCI COCA-COLA Bottling Co.*, 450 F.3d 476, 482 (10th Cir. 2006) ("we have described a 'rubber stamp' theory of liability, noting that '[t]o recover under this theory, the plaintiff must show 'that the decisionmaker followed the biased recommendation . . . without independently investigating"); and, *Rois* v. *Rossotti*, 252 F.3d 375, 382 (5th Cir. 2001) ("when the ultimate decision maker's action is merely a 'rubber stamp' for the subordinate's recommendation"). With all due respect to the Supreme Court of the State of New Hampshire and without being included in the decision making process of the Supreme Court of the State of New Hampshire and not accusing the Supreme Court of the State of New Hampshire of violating its obligation to petitioner Mitrano by merely applying the "rubber stamp" to the decision in *In re Mitrano*, 952 A.2d 901 (D.C. 2007), the decision of the Supreme Court of the State of New Hampshire at least has the appearance of being merely a "rubber stamp" decision. Keep in mind that the courts in the State of New Hampshire have routinely and systematically denied petitioner justice.

Also note the words of this Court in *Arizona* v. *Washington*, 434 U.S. 497, 517 (1978) implying that some cases may constitutionally require "findings" and "reasons" for the decision:

> "Review of any trial court decision, is of course, facilitated by findings and by an explanation of the reasons supporting the decision. No matter how desirable such procedural assistance may be, **it is not constitutionally mandated in a case such as this**. . . . ." (Bold emphasis added.)

Petitioner Mitrano contends the instant case required "findings and . . . an explanation of the reasons." Also note *Wolff* v. *McDonnell*, 418 U.S. 539, 558 (1974) ("The touchstone of due process is protection of the individual against arbitrary action of government"). Solely for the sake of an analogy, with all due respect to all the courts in the United States of America and without accusing any court of being a kangaroo court, but if a kangaroo court were to disbar petitioner Mitrano, does that mean other courts should blindly hop in step? Also see *Doe* v. *Gonzales*, 484 F.2d 445, 451 (7th Cir. 2007) ("It was a kangaroo court to make kangaroos blush."); and, *People* v. *Zackery*, 147 Cal.App.4th 330, 390 (2007) ("the trial court stated, 'Oh that's right. You can't offend the kangaroos up there in kangaroo court.'").

"The 'minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.'" *Santosky* v. *Kramer*, 455 U.S. 745, 755 (1982). Petitioner Mitrano contends that the State of New Hampshire clearly violates his federal Constitution rights to due process.

Moreover, the District of Columbia is a creature of "Acts of Congress affecting only the District, like other federal laws". See *Whalen* v. *United States*, 445 U.S. 684, 687-688 (1980), wherein this Court stated:

> "But it is clear that the approach described in the *Pernell* opinion is a matter of judicial policy, not a matter of judicial power. **Acts of Congress affecting only the District, like other federal laws**, certainly come within this Court's Art. III jurisdiction, and thus we are not prevented from reviewing the decisions of the District of Columbia Court of Appeals interpreting those Acts in the same jurisdictional sense that we are barred from reviewing a state court's interpretation of a state statute. *Ibid.* Cf. *Mullaney* v. *Wilbur*, 421 U.S. 684, 691; *Scripto, Inc.* v. *Carson*, 362 U.S. 207, 210;

Murdock v. *Memphis*, 20 Wall. 590, 632-633." (Bold emphasis added.)

Also see *Pernell* v. *Southhall Realty*, 416 U.S. 363, 368 (1974). Accordingly, petitioner Mitrano contends whether or not the Supreme Court of the State of New Hampshire agrees or disagrees with the disciplinary action of the District of Columbia Court of Appeals involves a question of federal law not state law. Thus, petitioner Mitrano contends the determination by the Supreme Court of the State of New Hampshire that petitioner Mitrano should be disbarred because the District of Columbia disbarred petitioner Mitrano involves a question of federal law, that is, did the District of Columbia Court of Appeals have a proper basis to disbar petitioner Mitrano.

The federal courts are not bound the interpretations of federal law as determined by state courts. Stated in other words, this Supreme Court of the United States has the power to review the interpretation of the federal law, that is, the District of Columbia Court of Appeals decision of disbarment, by the Supreme Court of the State of New Hampshire. See *Wright* v. *West*, 505 U.S. 277, 305 (1992) (O'Connor, J., concurring) ("[A] state court's incorrect legal determination has [n]ever been allowed to stand because it was reasonable. We have always held that federal courts, even on habeas, have an independent obligation to say what the law is.").

By way of background, the underlying proceeding in the District of Columbia is a legal lynching being conducted within the United States and arises from District of Columbia Bar Counsel falsely accusing petitioner of forging the signature of Mr. Michael J. Byorick on the back of a check. Note the following paragraph numbered 14 in the "Specification of Charges" signed under oath by Assistant Bar Counsel Traci M. Tait and signed (but not under oath) by Bar Counsel Wallace E. Shipp, Jr.:

> "14. Respondent [Peter Paul Mitrano] endorsed the check as follows:
> 'Pay to the order to
> Peter Mitrano
> Partial Legal fee [illegible] Expenses
> Dano Recovery Inc
> Michael J. Byorick, Pres"'

District of Columbia Bar Counsel's forgery case was destroyed when petitioner Mitrano presented the testimony of a certified forensic document examiner.

In one sentence, petitioner Mitrano is not guilty of any disciplinary violations because petitioner Mitrano only accepted a reasonable legal fee that was paid by check by an officer of his corporate client even though the amount of the payment exceeded the terms of the original fee agreement entered into in 1983. Note that although the District of Columbia charged petitioner Mitrano with being paid an unreasonable fee, petitioner Mitrano was not

found guilty of being paid an unreasonable fee. Accordingly, petitioner Mitrano was disbarred for being paid a fee that was not unreasonable.

In *S.A. Auto Lube, Inc.* v. *Jiffy Lube Intern., Inc.*, 842 F.2d 946, 949 (7th Cir. 1988) cited by the District of Columbia Court of Appeals on 952 A.2d 907, the entire paragraph from which the District of Columbia Court of Appeals quoted from in footnote number 4 discusses the failure on counsel to check the corporate records before making a statement as to the status of a corporation and reads as follows:

> "Further, counsel did not need to rely on either his associate or JL-Illinois' general counsel for the required information. The information was readily available. A corporation's state of incorporation is a matter of public record, and is available either through the Secretary of State or from the corporation's own books. Counsel could have pursued at least one of these simple, readily available and authoritative avenues of inquiry. See *Nassau-Suffolk Ice Cream v. Integrated Resources, Inc.*, 114 F.R.D. 684, 689 (S.D.N.Y.1987) ('When the attorney can get the information necessary to certify the validity of the claim in public fashion and need not rely on the client, he must do so.'). See also *Calloway v. Marvel Entertainment*

> *Group*, 111 F.R.D. 637, 646-47 (S.D.N.Y.1986) (failure to consult document expert when alleging forgery was unreasonable)."

In the instant case, contrary to the clear above-quoted language, the disbarment of petitioner Mitrano was predicated upon false allegations made contrary to the public records of Dano Resource Recovery, Inc. Despite petitioner Mitrano presenting the corporate record showing that Mr. Byorick was the executive vice president of Dano Resource Recovery, Inc. (after the abrupt closing of the District of Columbia hearing on June 8, 2006 but within the seven-day window allow by the District of Columbia Board's Rules and the Hearing Committee). See respondent exhibit numbered 41 [Mitrano who is now the petitioner was the respondent in the District of Columbia; hence, the reference to respondent exhibit] is a public document that was filed at the Secretary of State of the State of Delaware on October 7, 1985 clearly stating "Michael J. Byorick, Exec. Vice Pres.":

> "CERTIFICATE OF RESTORATION
> AND REVIVAL OF
> CERTIFICATE OF INCORPORATION
> DANO RESOURCE RECOVERY,
> INC.
>
> It is hereby certified that:
>
> 1. The name of the Corporation (hereinafter called the 'Corporation') is Dano Resource Recovery, Inc.

. . .

----------/s/----------

Michael J. Byorick,
Exec. Vice Pres.
Attest:
----------/s/----------
Henry Valentino, Secretary"

Thus, instead of the District of Columbia Court of Appeals taking action against District of Columbia Bar Counsel for presenting false evidence, that is, that Mr. Byorick was not the executive vice president of Dano Resource Recovery, Inc., the District of Columbia Court of Appeals adopted said false evidence and disbarred petitioner. See *Charpentier* v. *R. & R. Resort, Inc.*, 2002 WA 930, ¶ 31, 112 Wash.App. 1017, 2002 WL 1316232 *4 (2002) ("neglect is charged to the party's lawyer, who is responsible for researching and identifying . . . with verifying information that is available as a matter of public record"); and *Ali* v. *Mid-Atlantic Settlement Services, Inc.*, 233 F.R.D. 32, 39 (D.C. 2006) wherein the court stated:

> "Counsel may also be sanctioned for failure to conduct a reasonable inquiry of his client's factual contentions. Fed.R.Civ.P. 11(b)(3)(b)(4), (c). The rule requires counsel to do more than simply rest upon a client's evasive and incomplete statements of fact. A reasonable inquiry would provide

> counsel with either supporting evidence or a reason to decline to repeat a client's assertion . . . ."

Also see *Temple* v. *WISAP USA in Texas*, 152 F.R.D. 591, 597 (Neb. 1993) ("'[A] reasonable attorney . . . would have performed some investigation, two or three telephone calls, to verify the defendant's corporate status.'"); *Televideo Systems, Inc.* v. *Mayer*, 139 F.R.D. 42, 47 (N.Y. 1991) ("The attorney must ask if the client's knowledge is direct or hearsay"); *Harris* v. *Marsh*, 679 F.Supp. 1204, 1386 (N.C. 1987), aff'd, 914 F.2d 525 (4th Cir. 1990), cert. denied, 499 U.S. 959 (1991) ("When an attorney can get information necessary to certify the validity of a claim in public fashion and need not rely on the client, he must do so"); and, *S.A. Auto Lube, Inc.* v. *Jiffy Lube Intern., Inc.*, 131 F.R.D. 547, 549 (Ill. 1990) wherein the Court stated in part that:

> ". . . [T]he court of appeals emphasized that counsel for JLI should have verified the corporate citizenship of Jiffy Lube of Illinois by checking either the records of the Illinois Secretary of State or the corporation's own books. *Id.* at 949. Since counsel for JLI merely relied on the representations of two attorneys, rather than checking public records, the court concluded that counsel had failed to make a reasonable inquiry into the facts of the case. *Id.*"

Also note the public records doctrine. See *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 39 (1991) ("the only defense presented by Chambers was the Public Records Doctrine"); *Village of Evanston* v. *Gunn*, 99 U.S. 660, 666 (1878) (the records "are, as we have seen, of a public character, kept for public purposes, and so immediately before the eyes . . . They come, therefore, within the rule which admits in evidence 'official registers or records kept by persons in public office'"); *Grynberg* v. *City of Northglenn*, 739 P.2d 230, 238 (1987) ("the application of the public records doctrine"); *Porter* v. *Wright*, 69 F.Supp. 46, 47 (Or. 1946) ("'public Records' or 'quasi-Public Records' doctrine"); *Application of House*, 144 F.Supp. 95, 103 (Cal. 1956) ("not within the public records doctrine"); *In re Buck*, 219 B.R. 996, 1000 (Tenn. 1998) ("Under this public records doctrine"); *Bannum, Inc.* v. *United States*, 59 Fed.Cl. 241, 245 (2003) ("public-records doctrines may provide a substitute"); *In re Century Offshore Management Corp.*, 119 F.3d 409, 413 (6th Cir. 1997) ("The public records doctrine"); *State ex rel. WHIO-TV-7* v. *Lowe*, 77 Ohio St.3d 350, 673 N.E.2d 1360, 1363 (1997) ("pursuant to the public records doctrine"); and, *Higg-A-Rella, Inc.* v. *County of Essex*, 276 N.J.Super. 183, 647 A.2d 862, 862 (1994) ("Relying on the public records doctrine").

Moreover, the Specification of Charges filed by the District of Columbia contain no support or notice for the factual premise that Mr. Byorick (who indorsed the check from Dano) did not have authority to indorse the check for

payment of legal fees. See R. ex. 26, a letter from Mr. Byorick to the District of Columbia dated April 13, 1983, which dealt with important issues and proposals made by Mr. Byorick on behalf of Dano before Government of the District of Columbia Contract Appeals Board which stated:

> "Please be assured that Dano will comply with all the terms and conditions of the contract . . .
>
> Sincerely,
> **Michael J. Byorick**
> **Executive Vice President"**
>
> (Bold emphasis added.)

Also see R. ex. 27, from Mr. Byorick to the District of Columbia dated June 9, 1983 stating:

> "Further, in view of the fact that there is a dispute under the terms and conditions of the contract and said dispute has been appealed in accordance with the contract, we hereby advise you that no action may be taken with our material without prior approval . . .
>
> Sincerely,
> **Michael J. Byorick**
> **Executive Vice President"**
>
> (Bold emphasis added.)

Also see R. ex. 28, from Mr. Byorick to the District of Columbia dated May 6, 1983 stating:

"The Honorable Marion Barry . .

. . . .

This is further to my letter of May 2, 1983, concerning the Dano project . . .

Sincerely,

Michael J. Byorick

Executive Vice President"

(Bold emphasis added.)

Also see R. ex. 29, from Mr. Byorick to the District of Columbia dated May 2, 1983 stating:

"The Honorable Marion Barry . . .

. . .

I understand you have discussed at great length with your staff the current Dano operations at Blue Plains. My telegram to you, dated April 24, 1983, summarized the Dano position at that time . . .

Sincerely,

Michael J. Byorick

Executive Vice President"

(Bold emphasis added.)

Also see R. ex. 30, from Mr. Byorick to the District of Columbia dated April 21, 1983 stating:

"Attached is a specific plan of action which we believe will resolve the major concerns listed in your referenced letter . . .

Sincerely,

Michael J. Byorick

Executive Vice President"
(Bold emphasis added.)

Also see R. ex. 31, from Mr. Byorick to the District of Columbia dated April 21, 1983 stating:

> "As you know, in addition to the 'float' time, which varies from 35 to 50 days depending on the invoice, and during which billing accrues to approximately $100,000 . . .
>
> Sincerely,
>
> **Michael J. Byorick**
>
> **Executive Vice President"**
>
> (Bold emphasis added.)

Also see R. ex. 32, from the District of Columbia to Mr. Byorick dated March 28, 1983 stating:

> "**Mr. Michael J. Byorick**
> **Executive Vice President**
> Dano Resource Recovery, Inc.
>
> . . .
>
> This in response to your letter of March 25, 1983 in which you raised several issues regarding the Dano operation and the implementation of your contract . . . ." (Bold emphasis added.)

Also see R. ex. 33, from Mr. Byorick to the District of Columbia dated March 25, 1983 stating:

"In order to avoid compounding the current problem, we ask the District to insure that the sludge we receive is at the required 80% moisture content . . .

Sincerely,

Michael J. Byorick

Executive Vice President"

(Bold emphasis added.)

Also see R. ex. 34, from the District of Columbia to Mr. Byorick dated April 11, 1983 stating:

"**Mr. Michael J. Byorick**

Executive Vice President

Dano Resource Recovery, Inc. . . .

This is in response to your letter of April 4, 1983 requesting that I rescind my decision to withhold payment of Dano invoices . . . ." (Bold emphasis added.)

Also see R. ex. 35, from Mr. Byorick to the District of Columbia dated Nov. 19, 1982 stating:

"We would appreciate your approval of the demonstration and concurrent notice to proceed with phase II of our contract.

Sincerely,

Michael J. Byorick

Executive Vice President"

Also see R. ex. 36, from the District of Columbia to Mr. Byorick dated Nov. 23, 1982 stating:

"**Mr. Michael J. Byorick**
Executive Vice President
Dano . . .
This is in response to two your letters of November 18, and 19, 1982 . . . ."
(Bold emphasis added.)

Also see R. ex. 37, from Mr. Byorick to the District of Columbia dated Nov. 18, 1982 stating:

". . . Consequently we propose not to take any sludge that day. We would operate the plant on an 'overnight' schedule . . .
Sincerely,
Michael J. Byorick
Executive Vice President"
(Bold emphasis added.)

Also see R. ex. 39, from Mr. Byorick to the District of Columbia dated April 12, 1983 stating:

"This is a follow-up to our conversation of April 11, 1983 . . .
Sincerely,
Michael J. Byorick
Executive Vice President"
(Bold emphasis added.)

The above documentary evidence proves Mr. Byorick was at least the executive vice president of Dano. Contrary to the above

documentary evidence, Mr. Frank E. Williams, Jr. falsely testified:

> "A Mr. Byorick had run into some problems personally--some health problems, some financial problems, some martial problems, a number of issues--and **he, when I took over as president of Dano, gave up all of his responsibilities at Dano** and actually became an employee at the job site working on the project. So he was not involved in management at all. He was just an employee. I think he was like an assistant superintendent at the job site." (Tr. 101 of June 5) (Bold emphasis added.)

Also note that Mr. Frank E. Williams, Jr. further falsely testified in the District of Columbia that:

> "Q Was he [Michael J. Byorick] ever executive vice president of Dano?
> A Not to my knowledge.
> Q Would you have known if he were executive vice president of Dano?
> A I would." (Tr. 116 of June 5)

Also note that Mr. Frank E. Williams, Jr. further falsely testified in the District of Columbia:

> "A . . . By then [1983] I had replaced Mr. Byorick as president of

Dano, so he just signed as Dano representative.

Q Was he an officer at that time?

A No, he wasn't." (Tr. 99 of June 5)

Instead of recognizing the above-quoted perjury committed by Mr. Frank E. Williams, Jr. in view of the above-cited overwhelming documentary evidence, the District of Columbia Court of Appeals utilizes the perjured testimony of Mr. Frank E. Williams, Jr. as a vehicle to attempt to disbar petitioner Mitrano. Petitioner Mitrano is simply astounded by the lack of justice. This bill collection scheme filed in the District of Columbia by Williams Industries, Inc. does not belong in the disciplinary arena. At 952 A.2d at 919 of the Board's report, it is stated:

". . . It was Williams Industries and Frank E. Williams, III in his capacity as president of Williams Industries, Inc. that filed the complaint against Respondent. Dano has not filed such a complaint . . . ."

Thus, because petitioner Mitrano's client, Dano Resource Recovery, Inc. did not file a bar complaint against petitioner Mitrano, this disciplinary matter should not have proceeded over the last eight years and counting. "To allow an authorized surrogate to champion the rights of the former client would allow that surrogate to use the conflict rules for his own purposes where a genuine conflict might not really exist." *In re Yarn Processing Patent*

Validity Litigation, 530 F.2d 83, 90 (5th Cir. 1976). In *Ware's Administrator* v. *Russell*, 70 Ala. 174, 179 (1881), the court stated in reference to a contract for attorney's fees that had been modified during the existence of the attorney-client relationship:

> ". . . The infirmity of the contract in this respect renders it only voidable at the election of the client. If he acquiesces, strangers to the contract have no right or cause to complain. If the assignment could be regarded as a contract of this character, the client has made no complaint of it, and it must be treated in this controversy as if it had been made between parties not sustaining any relation of confidence . . . ."

Also see *Bolte* v. *Rainville*, 138 N.J.Eq. 508, 48 A.2d 191, 196 (1946) (stating the same above-quoted rule "is invocable only by the client against whom enforcement of the stipulation is sought."). Accordingly, it is clear that Mr. Byorick, as an officer of petitioner Mitrano's client had authority to indorse the check as payment to petitioner Mitrano and "strangers to the contract" had no lawful right to pursue this matter against petitioner Mitrano.

Chair Hertz recognized at the underlying hearing in the District of Columbia "if it's true that Mr. Byorick signed this [check], and he had authority" that Mitrano was "arguably . . . entitled to it". (Tr. 641-642 of June 6) Mr. Byorick testified as the corporate designee of Dano in a deposition in April 1986:

"A I told the assistant of mine to take the records to William's office.

Q Who was the assistant?

A Ron Hoffman. (R. ex. 20A, Tr. 8 of deposition Mr. Byorick as corporate designee of Dano of April 24, 1986)

. . .

A We at Dano, officers of Dano, gave up 50 percent of Dano, 50 percent of this contract, and in doing it went into a joint venture with the Williams Group, I'll call it, which for that 50 percent he was supposed to do all of the financing.

Q When you say the officers of Dano, who do you mean?

A I mean myself, Mr. Valentino, Mr. Metcalfe, and the rest of the stockholders, I should say. (R. ex. 20A, Tr. 19) . . .

Mr. Byorick also testified under oath before the Government of the District of Columbia Contracts Appeals Board on February 7, 1989, that he was the Vice President of Dano:

"Q Are you [Michael J. Byorick] an officer of Dano Resource Recovery, Inc.?

A [By Michael J. Byorick] Yes, **I'm vice president**. (Respondent's exhibit 20E, Tr. 9073 of hearing before the Government of the District of Columbia Contracts Appeals Board **on February 7, 1989**) (Bold emphasis added.)

The Supreme Court of the State of New Hampshire failed to explain why it did not give credit to the above-stated evidence. See *Ingersoll-Rand Financial Corp.* v. *Anderson*, 921 F.2d 497, 499 (3rd Cir. 1990) ("We have held that 'interpretation of a writing is generally a question of law for the court.' *Barco Urban Renewal Corp.* v. *Housing Authority* . . . .")

Note that Daniel Keith Maller, Esquire incorrectly testified:

> "Q At the time that **Mr. Byorick signed the retainer agreement, at page 4, its dated September 6, 1983**, he signs as 'Dano representative.' Do you know whether he was an officer at Dano at that time? (Bold emphasis added.)
>
> A No.
>
> Q No, you don't know or no he wasn't an officer?
>
> A I'm sorry. My answer is no. My understanding is he was not an officer.
>
> Q And do you know whether Mr. Byorick was an officer at Dano any time thereafter?
>
> A Yes—well, my understanding from the files is that he was not.
>
> Q Did you know Mr. Byorick?
>
> A No, never met him" (Tr. 323 of June 5)

Daniel Keith Maller, Esquire also testified at Tr. 328-329 (of June 5, 2006):

"A He [Mr. Byorick] was not an officer of the company. Had no further involvement **subsequent to the Dano project being shut down in 1983**, other than, as I said, as a witness in the litigation. He was a paid employee at the time that the events actually took place and Mr. Williams was the president and **any actions or activities that took place subsequent to 1983** were managed by Mr. Williams and all of us reported to him. All of those of us who were still working on the project. The project meaning the litigation.

Q Did that also include the Respondent, Mr. Mitrano?

A It did.

Q To your knowledge, the Respondent have any basis to believe that Mr. Byorick could make contracts or settlements on behalf of Dano based on his sole signature?

A No.

Q Why do you say that Respondent had no basis to believe that?

A From my observation, first of all, Mr. Williams is an easy boss to work for because you know who the boss is. And, secondly, **I'm very familiar with the corporate organization within** Williams Industries and including **Dano Resource Recovery and there were no transactions or corporate changes made subsequent to that point**. (Bold emphasis added.)

Thus, based upon the above-quoted testimony of Mr. Maller there were no "**corporate changes**" within "**the corporate organization**" of "**Dano Resource Recovery**" made after "**1983**". Clearly, although Mr. Maller was incorrect in testifying that Mr. Byorick was not an officer of Dano in 1983 based upon the overwhelming documentary evidence cited above, the undisputed testimony was that no "**corporate changes**" within "**the corporate organization**" of "**Dano Resource Recovery**" **were** made after "**1983**". Accordingly, because the District of Columbia record is now clear that Mr. Byorick was the executive vice president and sometimes referred to as the vice president after 1983 until at least February 7, 1989, the date when Mr. Byorick testified under oath before the Government of the District of Columbia Contracts Appeals Board (R. ex. 20E, Tr. 9073) that he was an officer of Dano and the vice president of Dano, the testimony of Mr. Maller must be accepted that there were no "**corporate changes**" within "**the corporate organization**" of "**Dano Resource Recovery**" made after "**1983**". Another reason not to recognize the District of Columbia decision is that it ignores the law that a determination of the status of an officer of a corporation is only to be determined in quo warranto proceedings. Also see *State ex rel. State Highway Commission* v. *Kemper*, 542 S.W.2d 798, 804 (Mo. 1976) (Bar Counsel "is bound by his own evidence whether adduced on direct examination or on cross-examination"). Mr. Maller also testified:

"Q When was the last board of director meeting related to Dano Resource Recovery, Inc.?

A Before the time that I started, to my knowledge—before 1988." (Tr. 357 of June 5)

In view of the overwhelming evidence (which is at least substantial), it is absolutely astounding, not to mention completely unjust, for anyone to state that Mr. Byorick was not at least the executive vice president of Dano when Mr. Byorick indorsed the subject check in view of the evidence presented in the District of Columbia.

Also note that on page 44 of the District of Columbia Court of Appeals' decision dated July 17, 2008, the District of Columbia Court of Appeals found that "inquiries to Respondent about the check had been made by neither Mr. Williams directly nor Dano, Respondent's client".

Furthermore, the District of Columbia also failed to provide petitioner Mitrano adequate notice of the factual basis of the charges despite this Court making clear in the case of *In re Ruffalo*, 390 U.S. 544, 550-551 (1968) that petitioner Mitrano was entitled to know the charges prior to the hearing:

". . . He is accordingly entitled to procedural due process, which includes fair notice of the charge . . . Therefore, one of the conditions this

> Court considers in determining whether disbarment by a State should be followed by disbarment here is whether 'the state procedure from want of notice or opportunity to be heard was wanting in due process.' *Selling* v. *Radford*, 243 U.S. 46, 51, 37 S.Ct. 377, 379, 61 L.Ed. 585.
>
> . . .
>
> "These are adversary proceedings of a quasi-criminal nature. Cf. *In re Gault*, 387 U.S. 1, 33, 87 S.Ct. 1428, 1446, 18 L.Ed.2d 527. The charge must be known before the proceedings commence . . .
>
> . . .
>
> "This absence of fair notice as to the reach of the grievance procedure **and the precise nature of the charges deprived petitioner of procedural due process**." (Citations omitted.) (Bold emphasis added.)

Also note *Hamdi* v. *Rumsfeld*, 542 U.S. 507, 533 (2004) ("'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'").

Moreover, in the instant case, the District of Columbia did not include the correct factual basis of the discipline in the Specification of Charges. In *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626,

671-673 (1985) it is appropriately stated in a dissenting opinion:

> ". . . The question before the Court, however, is not one of prediction but one of process. 'A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense--a right to his day in court--are basic in our system of jurisprudence.' *In re Oliver*, 333 U.S. 257, 273, 68 S.Ct. 499, 507, 92 L.Ed. 682 (1948). Under the Due Process Clause, 'reasonable notice' must include disclosure of 'the specific issues [the party] must meet,' *In re Gault*, 387 U.S. 1, 33-34, 87 S.Ct. 1428, 1446-1447, 18 L.Ed.2d 527 (1967) (emphasis added), **and appraisal of 'the factual material on which the agency relies for decision** so that he may rebut it,' *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 288, n. 4, 95 S.Ct. 438, 443 n. 4, 42 L.Ed.2d 447 (1974). These guarantees apply fully to attorney disciplinary proceedings because, obviously, 'lawyers also enjoy first-class citizenship.' *Spevack* v. *Klein*, 385 U.S. 511, 516, 87 S.Ct. 625, 628, 17 L.Ed.2d 574 (1967). Where there is an 'absence of fair notice as

to the reach of the grievance procedure and the precise nature of the charges,' so that the attorney is not given a meaningful opportunity to present evidence in his defense, the proceedings violate due process. *In re Ruffalo*, 390 U.S., at 552, 88 S.Ct., at 1226 (emphasis added). (Footnote omitted.)

"The Court acknowledges these guarantees, but argues that the Board's change of theories after the close of evidence was 'of little moment' because Zauderer had an opportunity to object to the Board's certified report before the Supreme Court of Ohio. Ante, at 2283. This reasoning is untenable. Although the Supreme Court of Ohio made the ultimate determination concerning discipline, it held no de novo hearing and afforded Zauderer no opportunity to present evidence opposing the Board's surprise exercise of judicial notice. Under Ohio procedure, the court's role was instead limited to a record review of the Board's certified findings to determine whether they were 'against the weight of the evidence' or made in violation of legal and procedural guarantees. *Cincinnati Bar Assn.* v. *Fennell*, 63 Ohio St.2d 113, 119, 406 N.E.2d 1129, 1133 (1980). (Footnote omitted.) All that

> Zauderer could do was to argue that the Board's report was grounded on a theory that he had never been notified of and that he never had an opportunity to challenge with evidence of his own, and to request that proper procedures be followed. (Footnote omitted.)
>
> "The court completely ignored these objections. (Footnote omitted.) To hold that this sort of procedure constituted a meaningful 'chance to be heard in a trial of the issues,' *Cole* v. *Arkansas*, 333 U.S. 196, 201, 68 S.Ct. 514, 517, 92 L.Ed. 644 (1948), **is to make a mockery of the due process of law that is guaranteed every citizen accused of wrongdoing**." (Bold emphasis added.)

In the above-quoted words of Justice Brennan, with whom Justice Marshall joined, concurring in part, concurring in the judgment in part, and dissenting in part from the majority decision in *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), petitioner Mitrano likewise contends that the fact that the Specification of Charges in the instant matter before the District of Columbia failed to advise petitioner Mitrano of "**the factual material on which the** [District of Columbia] . . . **relies for decision**" and, in fact, the misrepresentation of the alleged forgery charge is another example of an

attorney [petitioner Mitrano] being denied "due process of law that is guaranteed every citizen accused of wrongdoing." Note that in the instant case, the District of Columbia kept changing the "factual material" utilized for the recommendations and the decision. Despite petitioner Mitrano's requests for a continuance during the hearing stage of this matter to address the new factual matters raised by District of Columbia Bar Counsel for the first time during the hearing stage, Mitrano was denied "due process of law that is guaranteed every citizen accused of wrongdoing".

The majority opinion *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 654 n. 17 (1985) addressed the issue of the complaint not giving notice of the factual basis of the discipline and ruled because the matter in issue was subject to the doctrine of judicial notice, there was no denial of due process; this Court stated:

> "Appellant suggests that he was prejudiced by his inability to present evidence relating to the Board's factual conclusion that it was a common practice for persons charged with drunken driving to plead guilty to lesser offenses. **If this were in fact the case, appellant's due process objection might be more forceful.** But appellant does not--and probably cannot--seriously dispute that guilty pleas to lesser offenses are common in drunken driving cases, nor does he argue that he

> was precluded from arguing before the Ohio Supreme Court that it was improper for the Board of Commissioners to take judicial notice of the prevalence of such pleas . . . ." (Bold emphasis added.)

In the instant case, petitioner Mitrano was in fact denied due process because petitioner was not given the opportunity to present evidence and testimony concerning the factual allegations that were presented at the hearing but were not contained in the specification of charges. Moreover, it appears that there are some similarities between the disciplinary process in the *Zauderer* case and the District of Columbia.

Also note with reference to District of Columbia Bar Counsel falsely accusing Peter Paul Mitrano of committing forgery, it was stated in *Gray* v. *Netherland*, 518 U.S. 152, 164, 167-168 (1996), rehearing denied 518 U.S. 1047, that:

> "'Yet another way in which the state may unconstitutionally . . . deprive [a defendant] of a meaningful opportunity to address the issues, is simply by misinforming him.'
>
> . . .
>
> "A defendant's right to notice of the charges against which he must defend is well established. *In re Ruffalo*, 390 U.S. 544 . . . (1968) . . . ." (Citation omitted.)

Hence, by the District of Columbia Bar Counsel falsely accusing petitioner Mitrano of forgery, petitioner was misinformed of the factual basis of the charges against petitioner. Note the words of the District of Columbia Court of Appeals in respond to petitioner's lack of due process claims:

> "We deal, lastly, with Mitrano's claim that Bar Counsel leveled an unsupported charge of forgery against him, which (besides unfairly stigmatizing him) had the effect of misleading him in the preparation of his defense to the charges ultimately proven . . .
>
> "For the reasons discussed by the Board, Mitrano's claim that the single-sentence assertion in the Specification that he had personally endorsed the check in another's name caused him to overlook – or under-prepare to meet – the other serious charges including theft and intentional misappropriation is utterly without merit . . . ." 952 A.2d at 906.

Even in a case raised sua sponte by the District of Columbia Court of Appeals, *Morissette* v. *United States*, 342 U.S. 246, 259 (1952), this Court stated: "We think presumptive intent has no place in this case . . . this presumption would conflict with the overriding presumption of innocence". Also see *United States* v. *United States Gypsum Co.*, 438 U.S. 422, 437 (1978) ("intent generally remains

an indispensable element of a criminal offense"); *Norwood* v. *Harrison*, 413 U.S. 455, 471 (1973) ("No presumptions flow from mere allegations; no one can be required, consistent with due process, to prove the absence of violation of law."); *In re Medrano*, 956 F.2d 101, 102 (5th Cir. 1992) ("The notice of the allegations and the disbarment proceeding must satisfy the requirements of procedural due process."); *Thompson* v. *City of Louisville*, 362 U.S. 199, 206 (1960) ("Conviction upon a charge not made would be sheer denial of due process."); and, *Troxel* v. *Granville*, 530 U.S. 57, 65-66 (2000).

Nevertheless, despite the lack of due process, the Supreme Court of the State of New Hampshire ruled in essence that petitioner Mitrano was a thief. With all due respect, the decision dated July 17, 2008 is a study of contradictions. Note at 952 A.2d at 905 of the decision of the District of Columbia Court of Appeals states: "We adopt as our own the Board's Report, appended hereto, and supplement it only with the following brief analysis". The District of Columbia Court of Appeals' admittedly "brief analysis" clearly contradicts the underlying "Board's Report" on some of the major issues in this matter. The District of Columbia Court of Appeals states:

> ". . . Mitrano argues that he could not have wrongly taken – either by theft or misappropriation – funds of these 'others' without clear and convincing evidence that they

> owned the check proceeds or had a 'just claim' to them. *See In re Bailey*, 883 A.2d 106, 116-17 (D.C. 2005) (distinguishing claims of a client from 'third party claims'). But, regardless of the claim that others such as Williams Industries had to the money — whether by de facto ownership of Dano or 'creditor' **status that remained unproven— the record amply confirms that Dano itself owned the proceeds.**[3] . . ." (Bold emphasis added.)
>
> [3] . . . The disbursed **funds thus unequivocally belonged to Dano**, less any funds Mitrano had rightfully earned." (Bold emphasis added.)
>
> 952 A.2d at 906.

In said footnote numbered 3, the District of Columbia Court of Appeals clearly stated that: "The disbursed funds thus unequivocally belonged to Dano". In direct contradiction thereto, the District of Columbia Board's Report which was made a part of the District of Columbia Court of Appeals, states:

> ". . . Respondent did not address the contention contained in Mr. Williams' letter that Williams Industries was entitled to a portion of the proceeds of any check issued by the District of Columbia . . . ."
> (952 A.2d at 913)

> ". . . Williams Industries, and others had a sufficient interest in the proceeds of the check to preclude Respondent's unilateral action to cash the check and retain the proceeds . . . ." (952 A.2d at 916)

If as the District of Columbia Court of Appeals stated on 952 A.2d at 906, "[t]he disbursed funds thus unequivocally belonged to Dano", and that with reference to "others" for which their "status . . . remained unproven", then contrary to the above-quoted language in the adopted District of Columbia Board's Report, said "others" did not have an interest in the funds. It is important to consider the contradictions quoted above from the adopted District of Columbia Board's Report with the decision by the District of Columbia Court of Appeals that the funds did not belong to parties other than Dano Resource Recovery, Inc. and its attorney. While the District of Columbia Court of Appeals does not agree with the above-quoted language of the District of Columbia Board's Report that others (other than Dano Resource Recovery, Inc. and its attorney) had an interest in the funds, the District of Columbia Court of Appeals states at 952 A.2d at 905-906:

> ". . . The Committee's Report is replete with findings, for example, that Mitrano '*knew* . . . that others had an interest in the proceeds of the check' (emphasis added). The Board's conclusion that he 'wrongfully took from

> others' . . . is an unequivocal determination that he did not believe in good faith — genuinely or honestly—that he was entitled to all of the funds." (Footnote omitted.)

Thus, with all due respect to the Supreme Court of the State of New Hampshire, it is a violation of due process to adopt the District of Columbia Court of Appeals' decision stating Mitrano "wrongfully took from others" and that "Mitrano knew . . . that others had an interest in the proceeds" and then state in direct contradiction the money did not belong to others—it belong to Dano Resource Recovery, Inc. In other words, in one paragraph at 952 A.2d at 905-906, the District of Columbia Court of Appeals relies upon language to disbar Peter Paul Mitrano utilized by the District of Columbia Board and in the next paragraph at 952 A.2d at 906, the District of Columbia Court of Appeals rules the opposite of the very same language stating that "the record amply confirms that Dano itself owned the proceeds" and also that "[t]he disbursed funds thus unequivocally belonged to Dano". With all due respect, the District of Columbia Court of Appeals cannot have it both ways, Peter Paul Mitrano should not suffer the statement that "[t]he Board's conclusion that he 'wrongfully took from others . . .' is an unequivocal determination" and the contrary statement that "[t]he disbursed funds thus unequivocally belonged to Dano". If the status of others "remained unproven", Mitrano was not on

notice that the others were entitled to a portion of the subject check.

Moreover, the District of Columbia Court of Appeals' newly proposed conclusory declaration at 952 A.2d at 906, footnote numbered 2 that "there was abundant proof that Mitrano did not believe Byorick was authorized to sign over the whole of the proceeds to him as legal fees" is simply incorrect. Just because Dano Resource Recovery, Inc. owed money to other parties does not mean that "Byorick was" NOT "authorized to sign over the whole of the proceeds to" Peter Paul Mitrano "as legal fees".

The doctrine of judicial notice prevents the Supreme Court of the State of New Hampshire from adopting facts from other hearings. The Supreme Court of the State of New Hampshire should not have taken judicial notice of the factual matters from the District of Columbia. Note *General Elec. Capital* v. *Lease Resolution*, 128 F.3d 1074, 1081, 1083 (7th Cir. 1997); *United States* v. *Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) ("'court may take judicial notice of a document filed in another court 'not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.'"); Advisory Committee Notes to Rule 201 of the Federal Rules of Evidence; *Wyatt* v. *Terhune*, 315 F.3d 1108, 1114 (9th Cir. 2003), cert. den. *Alameida* v. *Wyatt*, 540 U.S. 810 (2003) ("[W]e have held that taking judicial notice of findings of fact from another case exceeds the limits of Rule 201.")

2. Do the actions and inactions of the State of New Hampshire and the District of Columbia related to this matter justify a revolution?

Note that on April 19, 1775, over 233 years ago, our forefathers began a revolution against the King of Great Britain in order to protect the rights and liberties of the present citizens of the United States of America. With all due respect to this Supreme Court of the United States, have we now come full circle wherein the revolution fought so bravely by our forefathers was for naught in that we are now exposed to the tyranny that our forefathers gave up their lives to stop?

Petitioner, Peter Paul Mitrano, respectfully and humbly requests that this Supreme Court of the United States rule whether the actions and inactions of State of New Hampshire and the District of Columbia justify another revolution. See *In re Anastaplo*, 366 U.S. 82, 112 (1961) ("the men who founded this country and wrote our Bill of Rights were strangers neither to a belief in the 'right of revolution' nor to the urgency of the need to be free from the control of government") (dissent); *American Communications Ass'n, C.I.O.* v. *Douds*, 339 U.S. 382, 439 (1950) ("we cannot ignore the fact that our own Government originated in revolution and is legitimate only if overthrow by force may sometimes be justified") (dissent). In the instant action, the State of New Hampshire has taken away petitioner's right to work as a lawyer. Enough is enough.

See *In re Ford Motor Co. Erisa Litigation*, (No. 06-11718) __ F.Supp.2d __, 2008 WL 5377955 *26 (E.D. Mich. December 22, 2008) ("'what was the cause of the American Revolution' . . . 'one damned thing after another.'"). Whether by design or otherwise, Petitioner Mitrano has been denied justice and due process. Note the words in the dissent of *Stump* v. *Sparkman*, 435 U.S. 349, 367 (1978) "A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity."

Mitrano contends that he has been subjected to the tyranny of the State of New Hampshire for too long. Mitrano has consistently been denied justice in the courts in the State of New Hampshire.

Conclusion

For these reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of the State of New Hampshire.

Respectfully submitted,

Peter Paul Mitrano
Pro se[1]
4912 Oakcrest Drive
Fairfax, Virginia 22030
Petitioner

Dated: February 9, 2009.

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[1] The petitioner, Peter Paul Mitrano, is a member of the Bar of this Court and other courts.

APPENDIX

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

ORDER

LD-2008-0006, In the Matter of Peter Paul Mitrano

On July 29, 2008, the Attorney Discipline Office filed a certified copy of the July 17, 2008 decision of the District of Columbia Court of Appeals, disbarring Attorney Peter Paul Mitrano from the practice of law. In accordance with Supreme Court Rule 37(12)(b), the court ordered that a copy of the July 17, 2008 decision be served upon on Attorney Mitrano. It further ordered that Attorney Mitrano and the Professional Conduct Committee (PCC) inform the court if either contended that the imposition of identical or substantially similar discipline would be unwarranted.

Attorney Mitrano filed a response to the court's order. He challenged the determination of the District of Columbia Court of Appeals that he committed disciplinary violations. He also argued that the procedure before the District of Columbia Court of Appeals deprived him of due process, that the imposition of the same or substantially similar discipline would result in grave injustice, or that the misconduct found warranted substantially different discipline in New Hampshire.

Rule 37(12)(d) provides for the imposition of reciprocal discipline by the court unless the respondent attorney or the PCC demonstrates, or the court finds, based on the face of the record from which the discipline is predicated, that: (1) the procedure followed by the jurisdiction imposing discipline was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) the imposition of the same or substantially similar discipline by the court would result in grave injustice; or (3) the misconduct established warrants substantially different discipline in New Hampshire.

Having reviewed the decision of the District of Columbia Court of Appeals and Attorney Mitrano's response, Attorney Mitrano has not demonstrated, and the court does not find, that any of these circumstances have been met. The court notes that Attorney's Mitrano argument that the procedure before the hearing committee and the District of Columbia Board on Professional Responsibility violated due process was reviewed and rejected by the District of Columbia Court of Appeals. We cannot find on the face of the record that the procedure followed by the District of Columbia Court of Appeals was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process. Nor has Attorney Mitrano established that disbarment would result in grave injustice or that the misconduct established would warrant substantially different punishment in New Hampshire. The

District of Columbia Court of Appeals stated in its decision that '[u]nderlying all of the violations is the Board's determination that Mitrano took and spent for his own purposes the entirely of a . . . check for $241,336.59 issued . . . to his client, . . . knowing that the funds – or at least the major part of the funds – did not belong to him." In light of this finding, we conclude that the imposition of disbarment is warranted.

Accordingly, as provided in Rule 37(12), Peter Paul Mitrano is hereby disbarred from the practice of law in New Hampshire. Attorney Mitrano is hereby assessed all expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter. See Rule 37(19).

Broderick, C.J., and Dalianis, Duggan Galway, and Hicks JJ., concurred.

DATE: October 6, 2008

ATTEST:

_____/s/_____

Eileen Fox, Clerk

Distribution:
Margaret H. Nelson, Chair
James L. Dehart, Esquire
Landya B. McCafferty, Esquire
Peter Paul Mitrano
NH Bar Association x5
Sherri Kluesener, Supreme Court
File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2008-0006, In the Matter of Peter Paul Mitrano, the court on November 10, 2008, issued the following order:

Peter Paul Mitrano's motion for reconsideration of this Court's order dated October 6, 2008 is denied.

Reconsideration denied.

Broderick, C.J., and Dalianis, Duggan Galway, and Hicks JJ., concurred.

Eileen Fox
Clerk

Distribution:
Margaret H. Nelson, Chair
James L. Dehart, Esquire
Landya B. McCafferty, Esquire
Peter Paul Mitrano
File